

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY D. MEDIATE and U.S. POSTAL SERVICE,  
POST OFFICE, Indianapolis, IN

*Docket No. 99-1908; Submitted on the Record;  
Issued January 5, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that she sustained a recurrence of disability as of December 14, 1997 causally related to her accepted August 31, 1997 cervical strain.

On August 31, 1997 appellant, a 51-year-old special delivery messenger, injured her breast, arm, leg, hip and back when she was involved in a car accident. Appellant filed a claim for benefits on September 2, 1997, which the Office accepted for multiple contusions and cervical strain. Appellant was released to light duty on September 26, 1997 and released to full duty on October 13, 1997.

In a Form CA-20 completed on October 13, 1997, Angela Kenny, a physician's assistant, indicated that appellant had been released to return to full duty, but was restricted from lifting and driving.

In a letter to the employing establishment dated October 27, 1997, Ms. Kenny stated:

"On behalf of Advanced Occupational Health I am writing in reference to ... [appellant]. We have been treating this patient for a work-related injury for approximately eight weeks. We would like to refer this patient to a physiatrist at Orthopedics Indianapolis for further care of her injury.

"We have treated [appellant] with conservative medical therapy including physical therapy. The patient has not responded to our treatment and therefore we would like to refer her to someone who will be better able to manage her condition and ... provide more involved therapy."

On January 5, 1998 appellant filed a Form CA-2a, claim for recurrence of disability, alleging that she sustained a recurrence of disability as of December 14, 1997 which was causally related to her August 31, 1997 employment injury. In support of her claim, appellant submitted a December 17, 1997 report from Dr. Lynette Green-Mack, who noted complaints of

pain in the back, which were getting worse, and kept appellant out of work for a few days. Dr. Green-Mack advised that appellant had not been in physical therapy because she was unable to obtain authorization.

In a report dated December 31, 1997, Dr. Green-Mack stated that appellant remained off work, which seemed to improve her condition, but stated that she still had difficulty with sitting, walking and bending. In a report dated January 14, 1998, Dr. Green-Mack stated that appellant continued to be off work since her last examination of appellant, that her symptoms were about the same, and that she continued to have pain on a daily basis which was aggravated by bending, sitting, walking and standing. Dr. Green-Mack advised, in a January 28, 1998 report, that appellant still needed intervention for her low back and hip pain, and that she would not be able to work until she received treatment. Dr. Green-Mack reiterated in a February 11, 1998 report that appellant was still waiting for authorization for physical therapy from the Office.

By decision dated February 27, 1998, the Office denied appellant's claim for a recurrence of her work-related disability.

By letter dated March 21, 1998, appellant requested an oral hearing, which was held on October 27, 1998. In support of her request, appellant submitted a May 22, 1997 report from Dr. Green-Mack, who advised that appellant's condition had improved since her last visit, and that she was returning her to sedentary work with a 20-pound weight restriction for the next six months. Appellant also submitted several reports containing results of diagnostic tests taken in September 1997.

In a report dated December 23, 1998, Dr. Green-Mack summarized her history of treating appellant, noted that appellant underwent a magnetic resonance imaging [MRI] scan which revealed no radicular component to her pain and a disc bulge at L4-5 without any significant compression of the thecal sac or any significant stenosis. Dr. Green-Mack stated that appellant's low back pain was present 80 percent of the time and was aggravated by prolonged sitting, stair-climbing, lying flat or excessively fast walking. She also noted weakness in the left leg. Dr. Green-Mack concluded that appellant's condition had "plateaued" until August 31, 1997, when she essentially had an aggravation of her preexisting condition that had still not resolved. She further noted that an x-ray had indicated S1 joint stenosis and enthesopathy of the hip, which was appellant's primary complaint.

By decision dated January 15, 1999, an Office hearing representative affirmed the Office's previous decision. The hearing representative found that appellant established that she sustained a low back condition causally related to her August 31, 1997 employment injury, but found that the claimed condition/disability as of December 14, 1997 through March 1998 was not causally related to the August 31, 1997 employment injury. The hearing representative therefore concluded that appellant failed to establish a recurrence of disability as of December 14, 1997.

The Board finds that the case is not in posture for decision.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted

injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>1</sup>

In the present case, appellant has submitted ample rationalized, probative medical evidence, which is unrefuted, indicating that she still suffered residual pain from her August 31, 1997 employment injury, and which relates her disability for work as of December 14, 1997 to her August 31, 1997 employment injury. Appellant has submitted supporting medical evidence in the present case, which includes the October 13, 1997 Form CA-20 completed by Ms. Kenny, the physician's assistant, which restricted her from lifting and driving and Ms. Kenny's October 27, 1997 letter to the employing establishment which documented appellant's treatment over an eight-week period for a work-related injury and referred her to an orthopedic physiatrist. In addition, Dr. Green-Mack indicated in reports from December 1997 and January 1998 that appellant continued to have pain in her low back and hip on a daily basis, which was aggravated by sitting, walking, and bending, and emphasized that appellant needed to undergo an MRI scan and physical therapy,<sup>2</sup> which the Office refused to authorize.

The Board finds that the evidence submitted by appellant, which contains a history of the development of the condition and a medical opinion that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.<sup>3</sup> Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's August 31, 1997 work injury and her alleged December 14, 1997 recurrence of disability, and is sufficient to require further development of the case record by the Office.

On remand, therefore, because the evidence in this case record has not been adequately developed, the Office must determine whether appellant met his burden of establishing that on December 14, 1997 she experienced a recurrence of his employment-related disability which was caused or aggravated by her employment injury, thereby entitling her to continuing compensation for total disability. Accordingly, the Office should further develop the medical evidence by requesting that the case record, along with a statement of accepted facts, be referred to an appropriate physician to submit a rationalized medical opinion on whether appellant sustained a recurrence of her employment-related lower back condition/disability as of December 14, 1997 which was caused or aggravated by her August 31, 1997 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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<sup>1</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>2</sup> Dr. Green-Mack had kept appellant out of work until appropriate physical therapy had been administered.

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

The January 15, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC  
January 5, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Valerie D. Evans-Harrell  
Alternate Member